Ring Can Corporation, and RAPAC, a Joint Venture Between Ring Can Corporation and Microwave Development, Inc., a Joint Employer *and* Furniture Workers Division, I.U.E., Local 282, AFL–CIO. Cases 26–CA–13231, 26–CA–13273, and 26–RC–7160

June 12, 1991

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On August 23, 1990, Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge made several minor factual and typographical errors. Dean Owens became president of the Respondent on March 15, 1989, and he met with his senior staff ''within a couple of weeks of him coming on board.'' Peter Libby is the Respondent's vice president of operations. The judge's reference to supervisor meetings with individual employees ''as follows:'' refers to meetings that he discussed later in his decision. Also, the word ''button'' should be substituted for the word ''bottom'' in the first paragraph in which he discussed par. 9 of the complaint in the section entitled ''Conclusions.'' Finally, it is the election in Case 26–RC–7160 that is to be set aside, and that case is to be remanded to the Regional Director for further appropriate action.

[2] The Respondent argues that it was merely lawfully implementing its WIN-WIN program when two of its supervisors, in one-on-one employee interviews in May 1989, put questions to employees that induced them to specify their desires for various improvements in terms and conditions of employment, i.e., that the interviews did not amount to a solicitation of grievances calculated to affect the June representation election. It is true that plans for the WIN-WIN program (which entailed soliciting employee views on what could help reduce employee turnover) were announced before May 8, when the Union filed its election petition. But even assuming arguendo that the implementation of such a preplanned program after the filing of an election petition would not be an unlawful solicitation of grievances, the Respondent's conduct was plainly unlawful under the circumstances here. Nothing in that program as originally developed required Supervisor Williams to use the one-on-one interviews for such purposes as promising one employee that ''money is coming,'' telling another that they were ''working'' on insurance, and asking such questions as whether an employee knew anything about a union or why an employee felt a union was needed.

We find it unnecessary to pass on whether or not, given the circumstances in which it was made, Supervisor Williams' statement to employees that ''if the employees go on strike they would not lose their jobs but they could be replaced,'' constituted an unlawful threat. A finding of a violation would be cumulative.

With respect to the finding that the Respondent, through Supervisor Fletcher, violated the Act by threatening employees that it would be futile for them to select the Union, Members Devaney and Raudabaugh note particularly the context in which the threats were made. Fletcher's comments, considered in context, conveyed the message that selection of the Union would lead to dire consequences and the Union would be unable to do anything about such consequences. Where, as here, an employer not only threatens unlawful consequences but also threatens that the Union will be powerless to prevent them, Members Devaney and Raudabaugh conclude that the former threat is aggravated by the additional threat concerning the futility of selecting the Union as bargaining representative. In these circumstances, they agree with the judge that both threats are unlawful.

Chairman Stephens does not find an unlawful threat of the futility of organizing in Supervisor Fletcher's statement that Union President Rudd and the Union were no good and did nothing for employees at another unionized company. Rather, the Chairman construes these statements as comments of a disparaging but personal nature, separate and distinct from the threats of ominous consequences of unionization that Fletcher also uttered.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Ring Can Corporation, and Rapac, a Joint Venture Between Ring Can Corporation and Microwave Development, Inc., a Joint Employer, Oakland, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election conducted on June 29, 1989, in Case 26–RC–7160 be set aside and that this case be remanded to the Regional Director for Region 26 for the purpose of scheduling and conducting a second election at such time as he deems the circumstances permit a free choice on the issue of representation.

[Direction of Second Election omitted from publication.]

Jack Berger, Esq. and *Grace Speer, Esq.*, for the General Counsel.

Dorothy J. Pounders, Esq. (Blankler, Brown, Gilliland, Chase, Robinson & Raines), of Memphis, Tennessee, for the Respondent.

Ida Leachman, of Memphis, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Upon original charges of unfair labor practices filed by Furniture Workers Division, I.U.E., Local 282, AFL–CIO (the Union), on June 2 and 27, 1989, and amended charges filed on July 6, 1989, and August 4, 1989, respectively, against Ring Can Corporation, and RAPAC, a Joint Venture Between Ring Can Corporation and Microwave Development, Inc., a Joint Employer (the Respondent), a consolidated complaint was issued on August 14, 1989, on behalf of the General Counsel by the Regional Director for Region 26.

In substance, the consolidated complaint alleges that Respondent interfered with, coerced, and restrained its employees in the exercise of the rights guaranteed in Section (7) of the Act by:

a. Threatening employees with plant closure if they select the Union as their collective-bargaining representative.

b. Soliciting employees' complaints and grievances.

c. Promising employees benefits and improved terms and conditions of employment.

d. Interrogating employees about their union interest, sympathies and activities.

e. Telling employees other employees in unionized plants had reduced working hours and no contract.

f. Telling employees it would be futile for them to select a union as their collective-bargaining representative.

g. Interrogating employees about their union sympathies and polling them about their support for the union by the distribution of antiunion hats.

h. Verbally promulgating a rule restricting employees from distributing union handbill on company property during nonworking time and threatening them with unspecified reprisals if they violated the rule.

i. Verbally promulgating a rule restricting employees access to outside premises of the Respondent's facility during nonworking time.

j. Interrogating employees regarding their union membership and activities.

k. Threatening employees with loss of benefits if they selected the union as their collective-bargaining representative.

l. telling employees Respondent would never sign a contract with the union.

m. Threatening employees with loss of employment, if they selected the union as their collective-bargaining representative.

On August 2 and 23, 1989, the Respondent filed an answer and an amended answer, respectively, to the amended consolidated complaint denying that it has engaged in unfair labor practices as alleged.

The hearing in the above matter was held before me in Memphis, Tennessee, on February 20, 21, and 22, 1990. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record in this case, including my observation of the demeanor of the witnesses, and my consideration of the briefs filed by respective counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Ring Can Corporation, and RAPAC, a Joint Venture Between Ring Can Corporation and Microwave Development, Inc., a Joint Employer, is and has been at all times material a corporation with an office and place of business in Oakland, Tennessee (Respondent's facility), and has been engaged in the manufacture of metal and plastic containers and the extrusion of expanded polystyrene pellets.

During the past 12 months, the Respondent, in the course and conduct of its business operations described above, sold and shipped from its facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Tennessee.

Also, during the same time, the Respondent, in the course and conduct of its business operations above described purchased and received at its facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Tennessee.

The complaint alleges, the answer admits, and I find that Respondent is and has been at all times material an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Furniture Workers, Division, I.U.E., Local 282, AFL–CIO is, and has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Information*

Respondent is a Tennessee corporation with an office and place of business in Somerville where it is engaged in the manufacture of metal and plastic containers and polystyrene pellets.

Some time in January 1989, the Furniture Workers Division, I.U.E. (the Union) commenced organizing Respondent's employees. The campaign continued during February, March, and April 1989. The Union filed a petition for representation on May 8, 1989, and an election was held on Thursday, June 29, 1989.

The tally results were 41 votes against and 36 votes for the Union, and 5 ballots were challenged which was not determinative of the election. Following the filing of objections on July 6, 1989, an investigation was conducted and Objections 2, 3, 5, 6, 7, 8, and 9 were set for hearing because they were coextensive with allegations in the consolidated complaint and could best be resolved on record testimony.

An order consolidating Cases 26–CA–13231, 26–CA–13273, and 26–RC–7160 and an amended consolidated complaint was issued September 19, 1989.

The parties stipulated that at all times material, the following named persons occupied the positions set opposite their respective names, and are now and have been at all times material, supervisors of the Respondent within the meaning of Section 2(11) of the Act, and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ron Larner	Plant Manager
Wayne Kleist	Supervisor
Wade Bonner	Supervisor
Greg Bryant	Supervisor
Freddie Williams	Supervisor
Pete Libby	Supervisor
Chuck Fletcher	Supervisor
Terry Coon	Supervisor

The parties stipulated that Joe Krueger is a supervisor and plant manager of the metal division. By stipulation, paragraph 7 of the consolidated complaint was deleted.[1]

Issues

1. The subordinate issues presented for determination are whether Respondent:

a. Threatened employees with reprisal, loss of benefits, employment and plant closure if the employees selected the union as their collective-bargaining representative.

b. Coercively interrogated employees concerning their union membership, activities and sympathies.

c. Promised employees increased benefits and improved terms and conditions of employment during the Union campaign.

[1] The facts set forth above are not in conflict in the record.

d. Created the impression of surveillance of employees' union activities.

e. Informed employees it would be futile to select the union as their collective-bargaining representative.

f. Promulgated rules restricting employees' distribution of handbills and access to employer's outside premises during nonworking time.

2. Whether Respondent engaged in conduct which interfered with a free and fair election, affecting the election by:

a. Threatening union supporters with arrest.

b. Forbidding employees' distribution of union literature on company property.

c. Threatening employees with plant closure.

d. Soliciting complaints and grievances.

e. Promising improved benefits and terms and conditions of employment.

f. Informing employees of the futility and adverse consequence of unionization.

B. *Union Activity of Respondent's Employees*

Willie Rudd, president of the Union, testified without dispute that the Union (Local 282) held a series of meetings commencing a union campaign with Respondent's employees in January 1989. Supporting Rudd's testimony is the testimony of Daisy Billingsley, who signed a union authorization card February 23, 1989. Other employees signed union cards and attended union meetings between February and April 1989.

The uncontroverted and credited evidence of record shows that on March 15 Dean Owens became president of the Respondent. He immediately detected a high degree of employee turnover at all the Respondent's 13 plants located in 9 different States. Owens met with the senior staff on March 15, 1989, and introduced his concept of a ''Win-Win'' program. The program was defined as a philosophy that whatever each employee does well would be done with an effort to satisfy the customers, the suppliers, the employees and the community.

Owens met with plant managers from each of its 13 plants in San Destin, Florida, on April 7 and 8, 1989. He said he wanted all company employees, customers, and suppliers to have input into the way the Company does business. Large ''Win-Win'' banners were displayed at the meetings and each plant was later furnished with a ''Win-Win'' banner. Each plant manager was directed to meet with their supervisory staff and explain the Win-Win program to them first. Thereafter, each supervisor was to contact each employee and explain the program to them individually. However, neither the ''Win-Win'' concept nor the program was ever more fully explained as described orally, or in literature.

A week later, on or about April 15, 1989, in response to Vice President Peter Libby's directive, Ronald P. Larner, manager for the Somerville plant in question, met with plant managers, supervisors, and employees and expressed the company's concern about the reason for the turnover problem—why the biggest majority of employees leave Respondent's employ in all of its plants in less then 90 days. Present at the meetings were production supervisor, Mike Tailor, and maintenance supervisor, Johnny Hoof, as well as Supervisors Freddie Williams, Greg Bryant, and Wade Bonner. After the program was explained to the supervisors they were asked to give every employee a chance for input on how to make Respondent a better place to work. Manager Larner directed the supervisors to have followup meetings after the ''Win-Win'' program was explained to the employees. In compliance with Manager Larner's directive, the supervisors met with individual employees under their supervision.

Respondent's vice president of operations testified that he first learned about the employees' union organizing effort on May 8, 1989, the day before Respondent received the petition for representation on May 9, 1989.

Letter in Dispute

In an effort to establish that Respondent had knowledge of the employees' union activity as early as April 1989, counsel for the General Counsel offered the testimony of Union Representative Willie Rudd, and a copy of a letter purportedly received from the superintendent of Fayette County Schools (G.C. Exh. 6(b)). The letter, assertedly signed by Respondent's owner, Ring, was introduced to show that Ring expressed opposition to the superintendent granting the Union permission to use a schoolhouse for a union campaign meeting. Counsel for Respondent objected to Rudd's testimony and the admission of the letter in evidence.

The hearsay letter was nevertheless admitted in evidence by the bench to make it a part of the record. Counsel for the General Counsel did not produce the superintendent as a witness and Respondent did not produce Ring as a witness with respect to the authenticity and admissibility of the letter. Counsel for the General Counsel neither verified the signature on the letter as being the signature of Ring, nor presented any corroborating evidence that the letter was from Ring. Consequently, Respondent did not have an opportunity to cross-examine the superintendent and neither counsel has had an opportunity to examine Ring. Under the foregoing circumstances, I exclude the letter from evidence and any consideration, and I find that the General Counsel has failed to establish that Respondent received knowledge of the employees' union activity in April, or at any time prior to the day before Respondent actually received the representation petition on May 8, 1989.

C. *Paragraph 8 of the Consolidated Complaint Alleges that Respondent Solicited Employee Complaints and Grievances and Promised Employees Benefits or Improved Conditions*

1. Supervisor Freddie Williams

In testifying, Supervisor Freddie Williams acknowledged that he called individual employees under his supervision into his office and asked them ''what would it take to keep them with the company, and how did they feel about supervisors and managers.'' Williams testified that his meetings with the employees started the third week in March and was completed by mid-April 1989, instead of between May 11 and 31, 1989, as employees Kent Jones, Glenda Mitchell, Daisy Billingsley, Jeanetta Richardson, Henry Shaw, and William Lewis testified.[2]

[2] Based on the demeanor of Supervisor Williams, and the demeanor and consistently corroborating testimony of the above-identified employee witnesses, I am persuaded that Williams met with all six employees between May 11 and 31, 1989, as the employees testified. If Williams had in fact met with all of them between late March and mid-April as he testified he did, some

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Supervisor Williams acknowledged he asked each of the employees under his supervision ''What would it take to keep them in Respondent's employ?'' He did not deny he also asked them how were the supervisors and managers.

In responding to Williams' inquiries, employee witnesses Kent Jones, Glenda Mitchell, Henry Shaw, William Lewis, and Daisy Billingsley testified that they responded to Williams questions in language such as ''more money and better benefits, and greater appreciation of employees by supervisors and managers, some of whom were fair or okay.'' Jeanetta Richardson and Henry Shaw said they told Williams the employees needed a union. Jones said Williams responded to his answer about ''more money and better benefits'' by stating, ''the money is coming,'' with no reference to the benefits.

Employee Jeanetta Richardson testified that when she told Supervisor Freddie Williams that she thought the employees needed a union, Williams said I am glad you brought that up and he emphasized ''You.'' He asked her why she felt the employees needed a union. She told him if she got a raise, she did not want it taken from her 6 months later. She asked him what he thought about the Union and told her he was a company man and he was supposed to be against the Union. She asked him was that the way he felt or was that what the Company told him to said. Williams said that was the way he felt and he did not regret voting against the Union during the last union campaign; that the benefits, the money he was making was not worth the benefits the Union could give. Richardson said Williams than asked her ''What makes her think the man would do anything if he was pushed, referring to Mr. Ring [Respondent].'' Both Shaw and Richardson said this was the first such meeting they had with Williams.

2. Supervisor Greg Bryant

Supervisor Greg Bryant acknowledged in his testimony that he met with individual employees on his shift and asked them what could the company do to keep them with the company, and how did they feel about supervisors and managers.

Employee witness Lisa Lester testified that when Bryant called her to his office on May 16, 1989, Bryant asked her ''what did the company need to do to keep her in its employ.'' She said she needed more money, better working conditions, a dental plan and paid holidays. Bryant's only response was he wanted his employees to be happy and work together. Lester told him the supervisors and managers were nice to her. She said this was the first time she had met with Bryant in his office and Bryant did not dispute her testimony in this regard.

Employee witness Lisa Bryant testified that while in Supervisor Bryant's office on May 18, 1989, he asked her what would it take for her to be a life-long employee with Respondent. Lisa Bryant said she told Supervisor Bryant she did not plan to be there the rest of her life but she thought the other people who would be there wanted a retirement plan and more money. When he asked her how she felt about management she told him they were ''okay—fair.'' When he asked her about Respondent's insurance plan, she told him she thought the company should pay for the insurance. Bryant told her if the employees had any problems they could come to him. Supervisor Bryant did not deny he made these remarks to Lisa Bryant.

Employee Lisa Bryant also testified that she had been asked question similar to Bryant's questions by Plant Manager Ron Larner during an April 10, 1989 meeting with the employees, when the employees were asked what changes would they like to see.

Employee witness Valerie Wallace testified that on May 16, 1989, Supervisor Bryant called her to his office and asked her what would it take to keep her working there. She told him ''more money and better working schedules.'' Bryant told her Managers Mike Taylor and Ron Larner would have to talk about that later. Bryant also asked her what she thought about the supervisors and managers and she told him ''they were not too good.'' This was the first such meeting she ever had with Supervisor Bryant.

Employees Valerie Wallace testified that about a week before May 16, 1989, Supervisor Bryant told her Union Representative Willie Rudd was a ''butthole'' and Bryant had worked with a union before and that was the reason he became employed by Respondent, because the union was not any good. Bryant said if the Union came in Respondent would be like Master Apparel and Somerville Mills, with employees working 2 or 3 days a week without a contract, and there is always the probability of employees' losing some holidays in order to give them a raise. Bryant said unions cause a lot of strikes and Sears was closed by the Union. She asked Bryant what was his definition of a union and he said ''An Outsider.'' Wallace said Bryant also said Langston Bag House's employees were picketing Langston and they did not have a contract. A union campaign was in progress at Master Apparel and Langston by the same union Rudd represents, Local 282.

Supervisor Bryant did not dispute the testimony of either Lisa Lester, Lisa Bryant, or Valerie Wallace, but said he merely recorded their responses to turn them in to Manager Ron Larner. I therefore credit the uncontroverted testimonial accounts of Lester, Lisa Bryant, and Valerie Wallace.

Conclusions

Based on the foregoing credited testimony, I find that Supervisors Freddie Williams and Greg Bryant met with employees on their respective shifts, and without any assurances against reprisals against them if they selected the Union, solicited their complaints and grievances about their continued work relationship with Respondent, and their individual feelings about their working relationship with their supervisors and managers.

I further find that in response to employee Kent Jones' reply (more money and better benefits), Supervisor Freddie Williams promised Jones ''the money is coming'' and Supervisor Greg Bryant acknowledged he recorded the employees complaints to turn them in to Manager Ron Larner.

Under the above circumstances, it is noted that the Board said in *Reliance Electric Corp.*, 191 NLRB 44, 46 (1971):

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of his meetings would have occurred prior to the meetings of managers in Florida on April 7 and 8, 1989, when the ''Win-win'' program was first introduced to managers. It is obvious that Williams was trying to show that he met with all of his employees before the Respondent had knowledge of union activity which it received, by admission, on May 8, 1989. Consequently, I discredit Williams' testimony on the timing of the meetings and I credit the testimony of the employee witnesses in this regard.

> Where, as here, an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, we think there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary.

The Board, continuing, said:

> As noted above, there is no doubt that a management official solicited complaints at the February meetings and explicitly promised employees that Respondent would strive to adjust them. While the management officials, who conducted the May meetings, phrased their replies to some of the complaints in such circumspect terms as undertaking to ''look into'' or ''review'' them, or could not recall whether they made a similar response to other complaints, such cautious language, or even a refusal to commit Respondent to specific corrective action, does not cancel the employees' anticipation of improved conditions if the employees oppose or vote against the unions.

Since one of the grievances expressed by nearly every employee from whom Respondent's supervisors solicited complaints or grievances was ''more money,'' Respondent's widespread polling or soliciting of the employees implied Respondent promised that it would remedy this general malcontent. *Raley's, Inc*., 236 NLRB 971 (1978).

Since the timing of the meetings with the employees in *Reliance* coincided with the union's organizing campaigns, the Board found that the meetings violated Section 8(a)(1) of the Act.

In the instant case, Respondent (Freddie Williams and Greg Bryant) did not have a previous practice of soliciting employee grievances because nearly all the employees testified without dispute that this was the first time they had been called in by their supervisor and asked about their complaints and grievances. Not only was this the first time Respondent solicited such complaints from its employees, but the solicitation took place only a few days or weeks after Respondent learned on May 8, 1989, about the employees union activity.

Under these circumstances, there is a compelling inference that Respondent, here, implicitly promised to correct those employee's dissatisfactions it learned about by soliciting the employees. *Reliance Electric Corp*., supra. However, here, unlike there, Respondent (Supervisor Williams) did in fact promise to rectify one of Kent Jones' complaints of ''more money'' when Williams told him, ''the money is coming.'' The latter statement by Williams constitutes an unequivocal promise of more money for Jones.

Notwithstanding, Supervisor Williams' explicit promise to Jones that ''the money is coming,'' as counsel for the General Counsel cites, the Board has further held in *Uarco Inc*., 216 NLRB 1 (1974), that:

> It is not the solicitation of grievances itself that is coercive and violative of Section 8(a)(1) but the promise to correct grievances or a concurrent interrogation or polling about Union sympathies that is unlawful; the solicitation of grievances merely raises an inference that the employer is making such a promise, which inference is rebuttable by the employer. [Id. at 2.]

Not only does the evidence of record fail to show that Respondent periodically held meetings with its employees and solicited complaints and grievances, but the credited testimony affirmatively establishes that the meetings with the employees here were the first ever held. Consequently, the *inference* that Respondent's solicitations would be acted on or rectified if the employees did not select the Union is not rebutted by Respondent and such solicitations were therefore in violation of Section 8(a)(1) of the Act. *Blue Grass Industries*, 287 NLRB 274 (1987).

Hence, in the instant case, even if Williams had not made the explicit promise that ''the money is coming,'' he and Supervisor Chuck Fletcher engaged in concurrent interrogation or polling of employees about their union sympathies, as is further described, infra. Consequently, since Supervisors Williams' and Fletcher's solicitation of grievances were not disavowed by either of them, but were also accompanied by interrogation of employees about their union sympathies and activities, Respondent's solicitation of grievances was coercive and therefore, in violation of Section 8(a)(1) of the Act. *Uarco Inc*., supra.

Moreover, as the Board held in *Raley's, Inc*., 236 NLRB 971 (1978), to find that an employer's solicitation of employees' grievances is not coercive simply because the employer did not express the promise to remedy them, would result in concluding that such solicitation meetings were a ''largely meaningless exchange concerning the employee's grievances and complaints.''

Paragraph 8 of the consolidated complaint also alleges that during their May meetings with employees, Supervisors Freddie Williams and Greg Bryant either threatened and/or informed employees of the following consequences if the employees selected the Union as their collective-bargaining representative.

In reference to the above allegations, employee Kent Jones credibly testified that during the May meeting with Supervisor Williams, the latter asked him if Jones knew anything about a union. He replied, ''No, not really,'' and Williams told him he had been in a union before and there were some questions Jones needed to ask if he wanted to know anything about a Union. Among other things, Williams said if the employees go on strike they could not draw unemployment benefits and the employees ''needed to think about their family.'' Williams said if the employees go on strike they would not lose their jobs but they could be replaced; and that Ring (Respondent) did not have to give the employees anything; that the president of the Union could ask for anything but Ring could say no as many times as he wanted. Williams denied he told employees it would be futile for them to select the Union because they would not get anything.[3]

[3] As I observed Kent Jones testify, I was persuaded not only by his demeanor that he was testifying truthfully but also by the fact that his account illustrates how tactful and cautious Williams was trying to be in discussing the Union. First it is noted that Williams initiated the subject of the Union by asking Jones if he knew anything about the Union. When Jones said ''No,'' Williams volunteered telling Jones a number of things about unionization, some of which were accurate and some of which were not but all obviously

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Additionally, employee Henry Shaw testified that during his meeting Williams in late May 1989 Williams asked him what he thought of the Union and he told Williams he thought the employees needed a union so they could have some say-so on company rules. Williams told Shaw that Union President Willis Rudd would not pay his car note; and that all the employees would wind up doing is paying union dues, which they did not need. Williams told him he previously worked for a company where the employees elected the Union as their representative. Employees thereafter went on strike and the company closed down; and that if Respondent's employees selected the Union, Respondent would probably close down. Williams denied he made the latter statements.

Shaw said Williams also asked him if he liked to walk a picket line and Shaw said he told Williams he would if he had to; that Williams said that is ''what you will probably end up doing because if the Union comes in,'' they were going to strike and close down Respondent. Williams also denied he made the latter statements to any employees.

Shaw said he asked Williams would Respondent probably take back the newly painted bathroom, a raise, and a holiday it had recently given the employees. Williams said he did not think so, but Respondent could not promise the employees anything. Williams denied he told the employees they would lose their jobs or their benefits if they selected the Union. Since I believe Shaw asked Williams the latter question, I credit Williams' latter denial.[4]

Based on the foregoing and other credited testimony in this record, I find that during late May and early June 1989 Respondent, by Supervisor Freddie Williams, interrogated employees Kent Jones and Henry Shaw about their union interest, membership, activities, and sympathies by asking them during a union campaign what they thought about the Union; that it threatened employees with loss of jobs; telling employees Respondent did not have to give the employees anything; and that by telling employees Respondent could tell the Union ''No'' as many times as it desired, Respondent suggested to employees that Respondent would not sign a union contract, thereby informing or inferring that it would be futile for the employees to select the Union as their collective-bargaining representative; that Respondent (Williams) threatened employees with loss of employment by suggesting that Respondent would probably close down if the Union came in and the employees went on strike; and that Respondent created the impression among employees that their union activities were under surveillance by Respondent, by telling employee Henry Shaw Respondent knew he had been attending union meetings and what the union representative was telling the employees; and that all of such conduct by Respondent had a coercive and restraining effect on the exercise of employees' protected Section 7 rights, in violation of Section 8(a)(1) of the Act.

having a tendency to intimidate or cause Jones to have doubtful thoughts about the wisdom of unionization. It was already noted, as the record well reflects, that although Williams was trying to be tactful in explaining technical aspects of labor relations to Jones, Williams did not express himself well and had some difficulty communicating as he testified in this proceeding. Hence, I was persuaded that his testimony was not altogether truthful and accurate. Williams manifested an effort to be loyal to the Respondent's position and in doing so, I was further persuaded that he told employee Jones that they would not get anything if they selected the Union because the Union could ask for employee benefits but the Respondent could say no as many times as he desired.

[4] In evaluating Shaw's testimony in comparison with Williams' denials, I particularly note the consistency of Shaw's account with Kent Jones' account of the private conversations Williams held with each of them. Both accounts reveal the tremendous curiosity of Williams to learn how these employees felt about the Union, and how Williams' mostly voluntary comments to them manifested union animus and suggested to them that it would be futile for the employees to select unionization. I was also persuaded by the demeanor of these three witnesses, that Jones and Shaw were giving a truthful and accurate description of the conversations, and that Williams' account was less accurate and most of his denials not truthful. I therefore credit Jones and Shaw's account and discredit Williams' other denials.

D. *Paragraph 9 of the Complaint Alleges Violations on or about June 22, 1989*

The complaint alleges that on or about June 22, 1989, Respondent Supervisor Chuck Fletcher:

a. Interrogated employees about their union membership, activities, and sympathies.

b. Threatened employees with loss of benefits if they selected the Union as their collective-bargaining representative.

c. Threatened employees with plant closure if they selected the Union as their collective-bargaining representative.

d. Informed employees it would be futile for them to select the Union as their collective-bargaining representative, by telling them other employees represented by a union had reduced working hours and no collective-bargaining agreement.

Supervisor Chuck Fletcher

Employee witness John Murphy testified that a week before the election held on June 29, 1989, Supervisor Chuck Fletcher told him he wanted to see him in the break room. There, Supervisor Fletcher told him ''you are a union man, you know.'' Murphy told Fletcher he was undecided whether to vote for or against the Union. Murphy said Fletcher told him Union Representative Rudd was not any good; that his dad worked where they had the union and Rudd did not do anything for the employees—the union was not any good; that the furniture factory in Memphis closed, and look at what they did to the employees at Master Apparel where the employees are hardly working 1 or 2 days a week; and that Ring Can would probably end up the same way. After Swift and Charon Douglas came into the breakroom, Fletcher said if the Union gets in, the recently granted holiday to employees might get cut off and the employees may lose the credit union because they may be subject to negotiations; that student and part-time employee Charon Douglas might not get hired anymore because the Respondent would have to negotiate a contract; and that the raise granted may have to be bided on all over again.

Fletcher told Murphy he was just about to complete his probation and get a raise, but if the employees voted for the Union and thereafter go on strike, Respondent had the authority to fire them and they might lose their jobs; and that the recently acquired insurance benefits to the employees could be cut off, in order to pay the higher wages. Fletcher testified that he only gave the employees his personal opinions and Murphy acknowledged Fletcher was expressing his opinions in this regard. However, the evidence does not show that all of his opinions were solicited by the employees. Since Fletcher initiated the conversation, I am persuaded he volunteered his opinions on subjects other than paid holidays

and the credit union, and the credited evidence substantiates this conclusion.

John Murphy further testified that Fletcher asked him had he been to a union meeting and he replied ''no''; that Fletcher asked David Swift and Charon Douglas had they been to a union meeting. Charon said ''no'' and Swift, who was previously for the Union said ''yes,'' but thereafter Murphy said he noted Swift started wearing the ''Win-Win'' hat and stood for everything which was against the Union, including operating the intercom system which Fletcher showed him how to operate, and saying, ''vote no for Ring Can.''

Employee witness Charon Douglas corroborated Murphy's testimony of the time of the meeting; and that Fletcher asked David Swift and himself what they thought about the Union. Douglas said he told Fletcher it did not make any difference to him and Fletcher told them what could happen if the Union gets in, like Furniture Workers, with all those employees out of work.

Douglas further testified that Fletcher asked him about other factories in Somerville, like Master Apparel. He said he told Fletcher his father worked at Master Apparel. Fletcher asked him how many days a week was his father working and he told Fletcher at times he worked 2 or 3 days a week. Fletcher asked him did Douglas want that to happen to him, because ''he [Fletcher] did not want that to happen.''

Douglas testified Fletcher also asked them during the same meeting had they been going to union meetings in Somerville. Douglas told Fletcher he had been to one meeting. Murphy told Fletcher he had been to some meetings and David Swift told Fletcher he had been to two meetings. Fletcher then told him if the Union got in it was possible his job would be frozen and Douglas might not be able to work for Respondent next summer.

Chuck Fletcher testified that he became a supervisor April 3, 1989, and that he held a conversation with John Murphy, Charon Douglas, and David Swift some time before the union election, he could not recall just when. Fletcher said Murphy initiated the discussion about layoffs and strikes and Charon Douglas mentioned Master Apparel where his father was working 2 days a week. Fletcher also said Douglas raised the question whether he would be able to return to work next summer. He told Douglas he did not know because if the Union is voted in his summer job may have to be negotiated. Fletcher denied he told any employees they could lose their jobs if the Union won and they went on strike; and that he did not bet an employee the employee would not wear a Win-Win hat for a day. Fletcher also denied he asked employees what they thought about the Union.

Supervisor Chuck Fletcher acknowledged he met with employees John Murphy, David Swift, and Charon Douglas in the breakroom but he could not give an approximate date of their meeting except, that it occurred before the union election. Under these circumstances, based on the demeanor of Murphy, Swift, and Douglas, I credit Murphy's corroborated testimony of the date they met with Fletcher (a week before the election).[5]

[5] In crediting the participating witnesses in the breakroom discussion, it is noted that Supervisor Fletcher did not deny he told Murphy ''You are a Union man, you know,'' or that he told Murphy and other employees that Willie Rudd and the Union were not any good as well as other statements attributed to him by Murphy and Douglas. However, as I observed the demeanor of the witnesses, I was persuaded by the demeanor of the employee witnesses as compared with the demeanor of Fletcher, that the employees testified with greater self-assurance and accuracy. Fletcher's testimony is uncertain as to the time of the conversation as well as to some aspects of the contents of the conversation. I particularly noted that it was Supervisor Fletcher who admittedly called Murphy into the breakroom and initiated the conversation, by first calling Murphy a union man. When employees Douglas and Swift appeared at the site of the conversation, Fletcher continued to discuss the Union, unionization of other companies, and some of the labor relations problems they were having. Under these circumstances, I am persuaded the employees, particularly, Swift and Douglas, did ask some questions of Fletcher, such as would Douglas be hired next summer. However, I am persuaded by the demeanor of the witnesses, as well as the partially corroborating testimony of Douglas, that Murphy and Douglas were testifying truthfully with respect to Fletcher asking them what they thought about the Union and whether they had attended union meetings, as well as Fletcher informing them of some adverse consequences of unionization. That is, that Rudd and the Union were not any good, and that Ring Can would probably end up like the Furniture Factory and Master Apparel (reduced working hours, or closed). I do not draw an adverse inference from the fact that the General Counsel did not call Swift as a witness because Murphy testified how Swift indicated he was for the Respondent and against the Union. Phillips may not have been called to testify because of a suspicion that he too was for Respondent.

Conclusions

Based on the foregoing credited testimony and other credited evidence of record, I conclude and find that a week before the union election, Supervisor Chuck Fletcher:

a. Accused employee John Murphy of being a ''union man'' in order to elicit a reaction from Murphy, to which the latter responded he had not decided how he was going to vote in the union election; that Fletcher asked employees Murphy, Swift, and Douglas what they thought about the Union, and had they attended a union meeting, to which they responded in the affirmative; that Fletcher did not assure either employee against reprisals for engaging in union activity; and that, I find, under such circumstances, Fletcher's (Respondent) interrogation of Murphy, Swift, and Douglas was coercive and in violation of Section 8(a)(1) of the Act. *Southwire Co*., 282 NLRB 916 (1987).

b. During his interrogation of the employees, Fletcher threatened employees with loss of a recently granted raise and their insurance benefits if the employees selected the Union as their collective-bargaining representative. By so advising employees Murphy, Swift, and Douglas, without any subsequent disavowal of the validity of such eventualities by Supervisor Fletcher, I find such a threatening prophecy, or unsolicited opinions of a supervisor, had a coercive and restraining effect on the exercise of employees' protected rights under Section 7, and therefore violated Section 8(a)(1) of the Act. *Blue Grass Industries*, 287 NLRB 274 (1987).

I do not find that Fletcher threatened employees Murphy, Swift, and Douglas with loss of holidays and the credit union because Murphy admitted Fletcher was expressing his personal opinion in this regard, and presumably in response to the curiosity of Murphy.

c. During the same interrogation, Supervisor Fletcher told employees Murphy, Swift, and Douglas that if the employees selected the Union as their collective-bargaining representative and the employees thereafter go on strike Respondent had the authority to fire them; that Respondent will probably end up like Furniture Worker Company (in the community) which closed down and the employees were out of work; and that such unqualified forecasting statements by Supervisor Fletcher, without any disavowals or assurances against reprisals against employees for their union activity, constituted a threat of loss of jobs and plant closure. As such, Fletcher's

statements had a coercive and restraining effect upon the exercise of employees' protected Section 7 rights, in violation of Section 8(a)(1) of the Act. *Blue Grass Industries*, supra.

d. During the same interrogation conversations, Supervisor Fletcher informed employees Murphy, Swift, and Douglas that other unionized companies like Furniture Worker had closed down and Master Apparel's employees were working 2 or 3 days a week without a collective-bargaining agreement; and that the same union and Representative Willie Rudd were not any good and they did nothing for the employees at one of the aforementioned unionized companies. Such statements by Supervisor Fletcher, without disavowal of any of them not only manifested union animus, but also:

e. Threatened employees with loss of employment if they selected the Union.

Fletcher's statements that Union Representative Rudd and the Union were not any good because they did nothing for employees at another unionized company, and as such, tended to influence the employees that it was futile for them to select the union as their collective-bargaining representative. These unsolicited statements by Fletcher only a week before the election had a coercive and restraining effect on the exercise of employees' rights protected by Section 7. Consequently, Respondent's conduct was in violation of Section 8(a)(1) of the Act. *Coradian Corp*., 287 NLRB 1207 (1988).

Paragraph 9 of the complaint also alleges that Respondent (Supervisor Chuck Fletcher):

> (2) On or about June 23, 1989, at its Oakland, Tennessee facility interrogated its employees regarding their union sympathies and polled its employees concerning their support for the Union through its distribution of anti-union hats.

Employee Jeanetta Richardson testified essentially without dispute that after the date for the election was scheduled Company President Pete Libby started having meetings with the employees every Thursday at 2:30 p.m. in the engineering office. In a meeting with all 30–35 employees, a week before the election, Libby told the employees he had ''Win-Win'' hats for anyone who wanted one; that the ''Win-Win'' program meant new customers, and products for new customers. The hats were in a large box at the front of the meeting room where all persons in the room had to come near or pass as they went out of the only exit of the room. Manager Ron Larner was standing next to the box with one hat in his hand. Other supervisors were present, including Supervisors Freddie Williams and Jimmy Miles. As the employees left the room, they either passed by the box or came to the front near the box and some of them took hats and others did not. Richardson said she and some other employees were wearing a union bottom. Richardson's testimony is substantially corroborated in this regard by employee Daisy Billingsley, who added, that Managers Libby and Larner, as well as Supervisor Williams were in a position where they could see employees who took a hat and those who did not. Libby said a lot of you are wearing different kinds of hats and we will be wearing ''Win-Win'' hats. In this regard, Billingsley's testimony is uncontroverted.

In his speech to the employees on June 27, 1989 (R. Exh. 4), President Peter C. Libby testified that over the weekend there had been a union meeting. On Monday, he said the rumor circulated through the plant that the employees had been cautioned at the union meeting that Respondent would probably use scare tactics by threatening to shut down the facility if a union was voted in. So on Tuesday and Wednesday, June 27, he told the employees that was not true; that the Company was headquarters of a corporation, and that there was no way we would shut down the facility.

Employee Henry Shaw testified he attended a company called meeting approximately 2 weeks before the election where Libby was wearing a ''Win-Win'' hat and others were on hand for employees who wanted one. Shaw recalls Libby telling the employees that Union President Willie Rudd will try to scare them by telling them Respondent will shut down if the Union is selected, ''but we have not said that.'' He promised the employees that their jobs will remain exactly the same if the Union is selected. He also told them the employees' had the right to form a union—to organize—and that it did not make any difference which way they voted.

However, Shaw further testified that Libby did not specifically tell them that notwithstanding what any management person might have told them, the employees would not lose their jobs or the plant will not shut down, as had in fact been forecasted by Supervisors Williams and Fletcher. Nor did Libby tell them that supervisors would not threaten them, or any such threats would not be carried out, if the Union is selected as Supervisors Williams, Bryant, and Fletcher had specifically done prior to the election. Under these circumstances, I find that President Libby's statements to the employees that Respondent would not shut down were made in defense of what Libby called rumors of threats of plant closure, attributed to Union Representative Rudd (the Union). Such a general blanket disavowal of what a union representative might have said at a union meeting is not specific disavowals in response to specific threats, interrogation, and antiunion statements made by Respondent's supervisors to the employees.

As the Board stated in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), an employer may relieve itself of liability for unlawful questions and statements by repudiating them. To be effective however, the repudiation must be timely, unambiguous, specific in nature as to the coercive conduct, and free from other proscribed illegal conduct. In the instant case, Libby's statements were not specific in nature, timely, nor responsive to the statements and questions by supervisors, and therefore do not satisfy the criteria enumerated by the Board. Certainly, Respondent's conduct in this regard was not free from the numerous illegal conduct found here. *Passavant Memorial Area Hospital*, supra.

Employee Valerie Wallace testified that when she was leaving the plant at the parking lot gate on June 21, 1989, Supervisor Teary Keelin pulled up in his truck, got out and asked her, in the presence of employee Carl Watkins, where was her ''Win-Win'' hat. She told him she did not want one, and he left. At that particular time, she said she was wearing her ''jobs for justice'' pin for the Union.

Conclusions

It is clear from the foregoing essentially uncontroverted and credited testimony that Respondent did promote the Company's program by making its slogan ''Win-Win'' hats available to the employees at a company called meeting only a few days before the union election. Since the Company's

''Win-Win'' program was in effect prior to Respondent's receipt of knowledge of the employees' union activities on May 8, 1989, it would appear, at first glance, that Respondent did nothing contrary to employees' Section 7 rights.

However, when it is noted that Respondent had not only made the hats available to the employees by allowing them to take or not to take a hat from an unsupervised box of hats as they left the exit door of the plant, but that Respondent previously announced in the company called meeting of all employees and supervisors that the hats were available for anyone who wanted one. This was after President Libby had already made reference to the fact some employees were wearing different hats but stated, we are wearing ''Win-Win'' hats.

Additionally, Plant Manager Ron Larner stood beside the box of hats, and President Libby, and Supervisors Williams and Jimmy Miles were all in a position to see which employees took a hat, and which employees did not. Under such circumstances, the logical inference from such an arrangement is that most employees who took a hat would probably favor the employer in the election, and those employees who did not take a hat would probably favor the Union.

Given the Respondent's meeting arrangement and distribution of the hats, I find that the employees were deprived of a free and private choice in selecting a collective-bargaining representative; and that the Respondent's promotion of its program under such circumstances, had a coercive effect on the exercise of employees' Section 7 rights, in violation of Section 8(a)(1) of the Act. *Porta System Corp*., 238 NLRB 192, 199 (1978), enfd. 625 F.2d 399 (2d Cir. 1980).

E. *Paragraph 13 of the Complaint Alleges that Respondent Interrogated Employees Concerning Employees' Union Membership, Activities, and Sympathies*

Supervisor Freddie Williams

Employee Emmerson Gatewood testified he was called to the office by Supervisor Williams 2 weeks before the election, held on June 29, 1989, in which Williams asked him what did he think about the Union. He told Williams he did not know anything about the Union and asked Williams ''why don't you tell me about it.'' Williams denied he asked any employees how they felt about the Union. Nevertheless, Gatewood further testified that Williams told him he knew the Union was telling them about their side, but they have never told you about the Respondent's side. When he asked Williams about his raise he was to receive 90 days after his probation, Williams told him, ''you know you will get your raise when 90 days elapse, but if the Union comes in you would not get it because everything will be frozen until an agreement is reached through bargaining.'' As Gatewood was leaving the office, Gatewood said Williams called him back and told him he would receive his raise even if the Union came in—''you are a young man . . . I won't put up with no bull shit.''

Gatewood said Williams also asked him how did he think he got hired so fast, ''Did he think his step mamma helped,'' and he said ''no.'' Gatewood said he put in an application and Williams said he Knew that, but you got hired the same day, and Gatewood said ''right.'' Williams told him the reason he got hired so fast was because ''My dad and Mike Taylor are real close''; that Mike Taylor is a nice guy and he will help people but he has some people around here who don't want to help him.

Employee Henry Shaw testified that about a week before the union election, Williams sent for him and asked him what did he think about the Union. He said he told Williams he still thought the Union should come in. Williams asked him how did he feel about walking the picket line and he replied that he would still walk the picket line. Williams said ''You mean you're still willing to walk a picket line when 18 wheelers are trying to get in,'' and he said ''Yes.'' Williams said he ''was going to get in if he had to run over someone.'' However, Williams denied he asked any employees what they thought about the Union.

Shaw said Williams also told him

> I know you've been going to Union meetings and Willie Rudd (Union President) has been filling your head up that you will be making more money if the Union comes in, but Troxel (a union company) does not have a contract, and neither has Somerville Mills (a unionized company), and Master Apparel (a union company) is closing down; and that would probably happen here if the Union comes in.[6]

Conclusions

I conclude and find on the foregoing credited testimony that during the last 2 weeks before the union election held on June 29, 1989, Supervisor Freddie Williams (Respondent) sent for employee Gatewood and, on another occasion, called employee Shaw into his office and initiated conversations with each of them as follows:

a. Asked employees Gatewood and Shaw what they thought about the Union. By asking the employees such a question, only a few days before the union election, and without giving them any assurances against reprisals for their union interest or activity, Respondent coercively interrogated employees Gatewood and Shaw about their union membership, activities, and sympathies. *Southwire Co*., 282 NLRB 916 (1987).

b. Told employee Gatewood he knew Gatewood was attending union meetings and that the Union was telling the employees its side but not telling the Company's side. Williams told employee Shaw he knew Shaw had been going to union meetings and that Union President Willie Rudd was filling his head up that he and other employees will make more money with a union. Such statements by Respondent created the impression among the employees that their union activities were under surveillance by the Respondent. *Gupta Perimold Corp*., 289 NLRB 154 (1988).

[6] Although Supervisor Williams denied he interrogated employees about their union membership, activities, and sympathies, I was not persuaded by his demeanor that he was testifying truthfully. Williams' demeanor and his testimony throughout this proceeding, clearly demonstrate that he was the most active company proponent against unionization of the company. Many of his statements on the record to Henry Shaw, Emmerson Gatewood, and to other employees manifest union animus. The record also partly reflects how Williams was often selective in his answers to questions. On the other hand, both Shaw and Gatewood testified in a straightforward manner absent any appearance of bias. The substance of their testimony lacks any appearance of being contrived but manifest a ring of consistency which matches the demeanor of Williams that I observed. Consequently, I credit the testimony of Gatewood and Shaw, and I discredit Williams' denials and explanations.

c. When Supervisor Williams asked Shaw what he thought about the Union, Shaw told him he thought the Union should represent the employees. Williams asked Shaw for the second time how he felt about walking a picket line. When Shaw told Williams he would still walk a picket line, Williams asked him, even if an 18-Wheeler was trying to get in. When Shaw said ''yes,'' Williams said he would get in even if he had to run over someone. It is clear that such extensive questions and statements by Respondent constituted union animus and coercive interrogation of employees only a week before the election. *Southwire Co*., supra.

d. Respondent (Williams) asked employee Gatewood if he knew why he was hired so quickly. When Gatewood stated he applied for the job, Williams immediately informed him that he was hired quickly because his father was socially close with Plant Manager Mike Taylor. Williams also stated that Manager Taylor was a nice guy and would help people, but some people [employees] do not want to help him (inferentially, by not voting for the Union). By the latter statements Williams implicitly threatened Gatewood that he would be fired just as rapidly as he was hired, through the same connections by which he was hired, if the employees selected the Union. *Link Mfg. Co*., 281 NLRB 294 (1986).

e. Supervisor Williams told employee Shaw there were two other unionized companies in or near the community that did not have a union contract, and that another unionized company (Master Apparel) was closing down, and that would probably happen to Respondent (if the Union came in). Such statements by Williams constituted a threat of plant closure, without any factual basis for his prediction. *Coradian Corp*., 287 NLRB 1207 (1988).

It is therefore clear that all of the above questions and statements with employees, only 2 weeks before the union election, and without any disavowal or assurances to employees against reprisals by Respondent, had a coercive and restraining effect on the exercise of employees' Section 7 rights, and were clearly in violation of Section 8(a)(1) of the Act.

F. *Allegations in Paragraph 10 of the Complaint*

a. Respondent President Peter Libby verbally promulgated a rule restricting employees from distributing union handbills on Respondent's property during nonworking time.

b. Paragraph 11 of the complaint alleges the verbal promulgation of the rule threatened the employees with unspecified reprisals if they violated the rule.

Employee Joan McKennon, an inspector-packer, has been employed by Respondent over 10 years. Employee Correy McFerren was employed by Respondent from 1983 until August 1989. Both McKennon and McFerren testified that at about 11 a.m. on the day of the election (June 29, 1989) they had union handbills for distribution to the employees. Consequently, they stood outside by the steps of the plant near a lunch truck waiting for the employees to come out on their break. They noticed Supervisor Joe Kreiger came out of the door and immediately went back in. A few minutes later, President Peter Libby came out of the door and told them ''if you don't want to mess up your plans, you'd better get off the property.''

McKennon and McFerren left their position near the door and went down to the end of the road, 20 or more feet away from the door, and waited for the employees to come out for 30 minutes lunchbreak. McKennon acknowledged that was the only day any official of Respondent ever told them not to handbill on Respondent's property.

President Peter Libby acknowledged he saw McKennon and McFerren with handbills just outside the personnel and shipping door on the morning of the election; and that he thought about the 24-hour rule against campaigning before the election. With that in mind, he asked McFerren and McKennon to leave the location because he felt they might be violating the 24-hour rule and jeopardizing their position (a valid union election). McKennon and McFerren quitely went down to the end of the road where no one from management said anymore to them.

McKennon testified that no one had told them that campaigning within 24 hours of an election was prohibited.

Conclusions

The above testimony is essentially uncontroverted and credited.

Although employees McKennon and McFerren acknowledged Respondent did not prohibit them from handbilling on its property before the day of the election, the fact that President Libby ordered them to leave the location on company premises is not protected by the 24-hour rule. The latter rule applies to speeches by employers to captive massed assemblies of employees within 24 hours of a union election. *Peerless Plywood Co*., 107 NLRB 427 (1953). However, campaigning on the premises, away from the balloting or polls area is not prohibited by regulations governing elections.

In fact the Board has held that in the absence of a safety or compelling business reasons for its action, employees have a statutorily protected right to distribute campaign literature in parking lots or other nonworking areas on their own time. *EPE, Inc*., 284 NLRB 21 (1987). An employer's prohibition against the distribution of union literature by off duty employees was held in violation of 8(a)(1) of the Act. *Pizza Crust Co*., 286 NLRB 45 (1987).

Since Respondent in the instant case ordered handbilling-employees McKennon and McFerren off its premises, such order constituted a verbal promulgation of a rule by Respondent, restricting employees from handbilling on their own time. Such a rule violated the Act. *EPE, Inc*., supra. President Libby's added ultimatum to them ''if you don't want to mess up your plans'' constituted a threat of unspecified reprisals if the employees did not leave the property is also in violation of Section 8(a)(1) of the Act. *Pizza Crust Co*., supra.

G. *Allegations in Paragraph 12 of the Complaint*

a. On or about June 22, 1989, Respondent Supervisors Freddie Williams and Greg Bryant promulgated a rule restricting employees access to the outside premises of Respondent's plant during employees' nonworking time.

A composite of the essentially corroborated and credited testimony of employees Kent Jones, William Lewis, Daisy Billingsley, Jeanetta Richardson, and Emmerson Gatewood, as well as Supervisors Freddie Williams and Greg Bryant, established that between 11 and 11:25 p.m. after the shift on June 22, 1989, employees Kent Jones, William Lewis, Daisy Billingsley, and Jeanetta Richardson walked out of the plant to a distance of about 20 feet, stopped, and engaged in a

conversation. As they stood there conversing, employees Henry Shaw, Emmerson Gatewood, probably Barbara Jones, and other employees exited the plant and proceeded walking toward the parking lot.

A few minutes later, Supervisor Williams came out of the plant and approached Jones, Lewis, Billingsley, and Richardson and told them they had to get in their cars and get off the parking lot. Richardson said ''we haven't been leaving.'' Jones said he kept walking. The employees nevertheless continued to walk slowly toward the parking lot, stopping at times.

Supervisor Williams came out of the plant again and ordered the employees to leave the premises. They told him, they were not in any hurry. At that time, Supervisor Greg Bryant came out of the plant and Williams asked Bryant to call the police. A few minutes later the police arrived and approached and talked with Supervisor Williams and Bryant. Thereafter, the police approached Richardson, Billingsley, Jones, and other employees and told them Supervisor Williams said he was having problems with them standing on the property, and if they did not leave, they would have to accompany them in their squad cars.

Both employees Kent Jones and William Lewis testified that employees had previously congregated on the premises after the work shift on many occasions and had never been directed to leave the premises. Jones testified employees have previously remained on the premises as long as two to three hours after the shift and employee Lewis said Supervisor Williams had previously sat outside and talked with them.

Employees Jones, Billingsley, and other employees denied they were talking loud or using profane language while conversing on the parking lot.

Supervisor Freddie Williams testified that on the night in question (June 22) he looked out the door at 11:20 p.m., as he routinely does at the end of his shift, and he saw the unusual congregation of employees making a lot of noise and cursing. He could not recall who was cursing. Employees Jones, Richardson, and others denied the employees were talking loud or using profane language. Supervisor Williams nevertheless testified that earlier in the day on June 22, 1989, employees Maggie Anderson and Helen Kiest and Manager Mike Taylor told him that employee William Lewis had been carrying a knife or weapon for him (Williams). Lewis denied he had a knife. Williams said he had decided to go outside and ask the employees to leave the premises. He said Jeanetta Richardson told him to go get ''F____d.'' Supervisor Greg Bryant came outside 5 minutes later. Williams said he was concerned about the safety because there had been incidents of vandalism (slashing of tires or breaking into cars). Richardson testified that her tires had been slashed 2 years ago but she had not heard of any further incidents of vandalism. Supervisor Williams denied he told the employees he was making a rule that employees could not tarry outside the plant after the shift.

On further examination, Supervisor Williams acknowledged that neither he nor any other member of management called employee William Lewis to the office and questioned him about possessing a knife or weapon; and that he admitted he did not see Lewis with a knife when he approached the employees on the lot. He acknowledged he was not threatened by any employee and that he had never asked employees to leave the premises prior to this time. He said they never hung around the premises that long. However, employees Kent Jones and William Lewis testified that employees did tarry on the premises after the 3 to 11 p.m. shift and I credit their testimony because I was persuaded by their demeanor and all the credited evidence of record, infra, that some employees, including Supervisor Williams have previously tarried on the premises after the work shift.

Conclusions

Although Supervisor Williams testified he directed the employees to leave the Company's property on June 22 because he had received rumors that day that employee William Lewis had a weapon (knife) for him, I am not persuaded by Williams' contended reason for his action because the sources of the contended rumor, neither Maggie Anderson nor Helen Kiest appeared and testified, and Manager Mike Taylor did not corroborate Williams' testimony of the rumor. William Lewis acknowledged he and other employees have access to a knife as a tool in the performance of their jobs, but he denied he carried or had a knife on his person before or after the work shift on June 22.

Moreover, neither Supervisor Williams nor any other member of management called employee Lewis or otherwise investigated the rumor. It is also particularly noted that Williams assumed all risk of verifying the contended rumor by walking outside by himself where Lewis and other employees were congregated. I am not persuaded that Williams would have assumed such a risk if there was in fact such a rumor. Williams acknowledged that no one threatened him when he approached and directed the employees to leave. In the absence of threatening, loud and profane language, or evidence of violence, I am persuaded that calling the police with the threat of arrest was excessive and motivated by the employees' union activities and the union animus of Williams. This is especially persuasive since employees have loitered on Respondent's property after the shift on prior occasions and were never ordered to leave.

Additionally, it is particularly noted that Supervisor Williams was the most active antiunion member of management. He was involved in nearly all alleged unlawful conduct in the complaint, and most of the evidence introduced in support thereof, and thus far, has been found involved in most of the unlawful conduct by the Respondent. Under these circumstances, I find that Williams' contended rumor of an employee having a weapon is not substantiated by the evidence. I discredit his assertion and the contended reasons for ordering and enforcing the employees departure from the premises on June 22. I further find, in view of Williams and Bryant's previously found unlawful conduct, that such conduct by Supervisors Williams and Bryant constituted a verbal promulgation of a rule a week before the election, restricting employees access to the outside premises of Respondent's facility during employees' nonworking time; and that such a rule and the enforcement of it by the Respondent coerced and restrained the employees in the exercise of their protected Section 7 rights, in violation of Section 8(a)(1) of the Act.

Local 282's Objections to the Election

The question presented for determination is whether the established unfair labor practices committed by Respondent

during the organizing campaign of its employees were of such consequential magnitude as to have interfered with the election process and preventing a free and fair election.

In this regard, the credited evidence of record established that during the critical period between the filing of the petition for representation on May 8, 1989, and the date of the election, June 29, 1989, Respondent committed the following unfair labor practices:

Objection 2 relates to the substantiated allegation in paragraph 12 of the complaint that a week before the election, the Respondent promulgated a rule restricting employee's access to its outside premises during the nonworking time of employees.

Objection 3 relates to substantiated paragraphs 10 and 11 of the complaint that Respondent verbally promulgated a rule on election day, which restricted employees from distributing handbills on

Respondent's property during employees' nonworking time, and that on the same date or dates threatened employees with unspecified reprisals if they violated the rule.

Objection 5 relates to paragraph 7 of the complaint which was deleted by stipulation of the parties, and to the substantiated allegation in paragraph 9(1)(c) of the complaint, that a week before the election, Respondent threatened the employees with plant closure if the employees selected the Union as their collective-bargaining representative.

Objections 6 and 7 relates to substantiated paragraph 8 of the complaint that between May 11 and 18, 1989, after the representation petition was filed on May 8, 1989, and before the election on June 29, 1989, Respondent solicited employees' complaints and grievances, promised employees increased benefits and improved conditions of employment.

Objection 8 relates to substantiated paragraphs 9(1)(d) and 13(3) that by telling employees or implying on or about June 22, 1989, that employees in other companies represented by the Union had reduced working hours and no contract, Respondent was informing employees or implying that Respondent would never sign a contract with the Union and that it would be futile for them to select a union as their collective-bargaining representative.

Objection 9 relates to substantiated paragraph 9(b) of the complaint that on or about June 22, 1989, Respondent threatened employees with loss of benefits if they selected the Union as their collective-bargaining representative; and that in paragraph 9(1)(e) Respondent threatened its employees with loss of employment if they selected the Union as their collective-bargaining representative.

Objection 9 relates to substantiated paragraphs 9(1)(b), 9(1)(e), 13(2), 14(2), 14(3) and 15, as follows: that in early June 1989, Respondent threatened employees with loss of benefits if they selected the union as their collective-bargaining representative;

Paragraph 14(2), that on or about June 15, 1989, Respondent threatened employees with loss of benefits if they selected the union as their collective-bargaining representative.

Paragraph 14(3) that on or about June 15, 1989, Respondent threatened employees with loss of employment if they selected the Union as their collective-bargaining representative.

Paragraph 15 that on or about the last week in June, 1989, Respondent threatened employees with loss of benefits if they selected the Union as their collective-bargaining representative.

Consequently, having found that the credited evidence of record substantiates all the above described objections, I further conclude and find that Respondent's afore-found unlawful conduct constituted the commission of independent, substantial, and pervasive unfair labor practices disruptive of fair election conditions and processes, which prevented the holding of a free and fair election.

Accordingly, I recommend that the election in Case 26–RC–13273 be set aside and that the Regional Director for Region 26 be directed to direct, and supervises the conduct of an election at such time as the Regional Director determines that a free election can be held, when compliance with the Order herein can be voluntarily achieved, after the elapse of the posting period; and should the Respondent fail to comply with the provisions in the Decision and Order and it is necessary to enforce the Order by decree of the United States Court of Appeals, then upon the Respondent's full compliance with such decree. The Regional Director may also in his discretion, consider what bearing the five challenges may have in his decision.

IV. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent threatened employees with reprisal, loss of benefits, employment and plant closure if the employees selected the Union as their collective-bargaining representative, coercively interrogated employees concerning their union membership, activities, and sympathies; during the union campaign promised employees increased benefits or improved conditions of employment, created the impression among employees that their union activities were under surveillance by Respondent, informed employees it would be futile to select the Union as their collective-bargaining representative; promulgated a rules restricting employees' distribution of handbills (literature) on company premises; and promulgated a rule restricting employees access to Respondent's outside premises immediately after working hours, Respondent has restrained and coerced employees in the exercise of protected Section 7 rights, in violation of Section 8(a)(1) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct.

Because of the character of the unfair labor practices found here, the recommended Order will provide that Respondent cease and desist from in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg., Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact and the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Respondent, Ring Can Corporation, and RABAC, a Joint Venture between Ring Can Corporation and Microwave Development, Inc., a Joint Employer, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Furniture Workers Division, I.U.E., Local 282 AFL–CIO is and has been at all time material a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with reprisal, loss of benefits, employment and plant closure if the employees selected the Union as their collective-bargaining representative, Respondent has violated Section 8(a)(1) of the Act.

4. By coercively interrogating employees concerning their union membership, activities, and sympathies, Respondent has violated Section 8(a)(1) of the Act.

5. By promising employees increased benefits and improved terms and conditions of employment during the union campaign, the Respondent has violated Section 8(a)(1) of the Act.

6. Unlawfully soliciting employees' complaints and grievances.

7. By creating the impression of surveillance of employees' union activities, the Respondent has violated Section 8(a)(1) of the Act.

8. By informing employees it would be futile to select the Union as their collective-bargaining representative, Respondent has violated Section 8(a)(1) of the Act.

9. By promulgating rules restricting employees' distribution of union handbills during non-working time, Respondent has violated Section 8(a)(1).

10. By promulgating a rule restricting employees' access to the Company's outside premises during nonworking time, Respondent has violated Section 8(a)(1) of the Act.

11. By interfering with, coercing, and restraining employees in the exercise of their protected Section 7 rights.

On these findings of fact and conclusions of law and the entire record, I issue the following recommended[7]

ORDER

The Respondent, Ring Can Corporation, and Rapac, a Joint Venture between Ring Can Corporation and Microwave Development, Inc., a Joint Employer, Oakland, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with reprisal, loss of benefits and employment, and plant closure if the employees select the Union as their collective-bargaining representative.

(b) Coercively interrogating employees concerning their union membership, activities, and sympathies.

(c) Promising employees increased benefits and improved terms and conditions of employment during a union campaign.

(d) Creating the impression among employees that their union activities are under surveillance by Respondent.

(e) Informing employees it would be futile to select the Union as their collective-bargaining representative.

(f) Promulgating a rule restricting employees from distributing union handbills on company property during nonworking time.

(g) Promulgating a rule during a union campaign restricting employees' access to Respondent's outside premises during nonworking time.

(h) Unlawfully soliciting employees' complaints and grievances.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercises of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at Respondent's place of business in Oakland, Tennessee, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with reprisal, loss of benefits and employment, and plant closure if our employees select the Union as their collective-bargaining representative.

WE WILL NOT coercively interrogate employees concerning their union membership, activities, and sympathies.

WE WILL NOT unlawfully solicit employees' complaints and grievances.

WE WILL NOT promise employees increased benefits and improved terms and conditions of employment during a union campaign.

WE WILL NOT create the impression among employees that their union activities are under surveillance by us.

WE WILL NOT inform employees it would be futile to select the Union as their collective-bargaining representative.

WE WILL NOT promulgate rules restricting employees distribution of union handbills during nonworking time.

WE WILL NOT promulgate a rule only during a union campaign restricting employee's access to our outside premises during nonworking time.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise and enjoyment of rights guaranteed them by Section 7 of the Act.

All our employees are free to become or remain, or refuse to become or remain, members of Furniture Workers Division, I.U.E., Local 282 AFL–CIO, or any other labor organization.

RING CAN CORPORATION, AND RAPAC, A JOINT VENTURE BETWEEN RING CAN CORPORATION AND MICROWAVE DEVELOPMENT, INC., A JOINT EMPLOYER